

ANTHONY A. CARONNA (AC0990)
LAW OFFICES OF ANTHONY A. CARONNA
291 Jewett Ave
Staten Island, NY, 10302-2631
(718) 522-5717
acaronna@gmail.com

Attorney for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

-----X

Ramon Morales and Tony A. Gerges,

Plaintiffs,

vs.

18CV3734 (DLI)(VMS)

Fourth Avenue Bagel Boy, Inc. d/b/a
Steve's Bagels and Steven Natale,

ANSWER TO COMPLAINT

Defendants.

-----X

Defendants, Fourth Avenue Bagel Boy, Inc. d/b/a Steve's Bagels ("Bagels") and Steven Natale ("Natale"), collectively referred to as "Defendants", by and through their attorney, Anthony A. Caronna, hereby answers the Complaint as follows:

NATURE OF THE ACTION

1. Defendants deny each and every allegation contained in Paragraph "1" of the Complaint.
2. Paragraph "2" of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph "2" of the Complaint.

THE PARTIES, JURISIDCTION AND VENUE

3. Denies knowledge or information sufficient to form a belief as to truth of the allegations contained in paragraph “3” of the Complaint.

4. Denies knowledge or information sufficient to form a belief as to truth of the allegations contained in paragraph “4” of the Complaint.

5. Admits paragraph “5” of the Complaint.

6. Denies each and every allegation contained in paragraph “6” of the Complaint.

7. Denies each and every allegation contained in paragraph “7” of the Complaint, except admits that Steven Natale is an adult male and resides in Brooklyn, New York.

8. Denies each and every allegation contained in paragraph “8” of the Complaint.

9. Paragraph “9” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “9” of the Complaint.

10. Paragraph “10” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “10” of the Complaint.

11. Paragraph “11” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “11” of the Complaint.

EMPLOYMENT OF MR. MORALES

12. Denies each and every allegation contained in paragraph “12” of the Complaint.

13. Denies each and every allegation contained in paragraph “13” of the Complaint.

14. Paragraph “14” of the Complaint contains legal conclusions to which no responsive

pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “14” of the Complaint.

15. Denies each and every allegation contained in paragraph “15” of the Complaint.

16. Denies each and every allegation contained in paragraph “16” of the Complaint.

17. Denies each and every allegation contained in paragraph “17” of the Complaint.

18. Denies each and every allegation contained in paragraph “18” of the Complaint.

19. Denies each and every allegation contained in paragraph “19” of the Complaint.

20. Denies each and every allegation contained in paragraph “20” of the Complaint.

21. Denies each and every allegation contained in paragraph “21” of the Complaint.

22. Denies each and every allegation contained in paragraph “22” of the Complaint.

23. Denies each and every allegation contained in paragraph “23” of the Complaint.

EMPLOYMENT OF MR. GERGES

24. Denies each and every allegation contained in paragraph “24” of the Complaint.

25. Denies each and every allegation contained in paragraph “25” of the Complaint.

26. Paragraph “26” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “26” of the Complaint.

27. Denies each and every allegation contained in paragraph “27” of the Complaint.

28. Denies each and every allegation contained in paragraph “28” of the Complaint.

29. Denies each and every allegation contained in paragraph “29” of the Complaint.

30. Denies each and every allegation contained in paragraph “30” of the Complaint.

31. Denies each and every allegation contained in paragraph “31” of the Complaint.

32. Denies each and every allegation contained in paragraph “32” of the Complaint.

33. Denies each and every allegation contained in paragraph “33” of the Complaint.

34. Denies each and every allegation contained in paragraph “34” of the Complaint.

35. Denies each and every allegation contained in paragraph “35” of the Complaint.

DEFENDANTS FAILED TO PROVIDE WAGE NOTICES AND STATEMENTS

36. Denies each and every allegation contained in paragraph “36” of the Complaint.

37. Paragraph “37” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “37” of the Complaint.

38. Denies each and every allegation contained in paragraph “38” of the Complaint.

39. Denies each and every allegation contained in paragraph “39” of the Complaint.

40. Denies each and every allegation contained in paragraph “40” of the Complaint.

SUMMARY

41. Denies each and every allegation contained in paragraph “41” of the Complaint.

42. Denies each and every allegation contained in paragraph “42” of the Complaint.

43. Denies each and every allegation contained in paragraph “43” of the Complaint.

40. Denies each and every allegation contained in paragraph “40” of the Complaint.

44. Denies each and every allegation contained in paragraph “44” of the Complaint.

COUNT ONE

(FLSA)

45. Defendants repeat, reiterate and reallege the answers set forth in response to paragraphs “1” through “44” of the Complaint as if fully set forth herein.

46. Denies each and every allegation contained in paragraph “46” of the Complaint.

47. Denies each and every allegation contained in paragraph “47” of the Complaint.

48. Denies each and every allegation contained in paragraph “48” of the Complaint.

49. Denies each and every allegation contained in paragraph “49” of the Complaint.

50. Denies each and every allegation contained in paragraph “50” of the Complaint.

51. Denies each and every allegation contained in paragraph “51” of the Complaint.

52. Denies each and every allegation contained in paragraph “52” of the Complaint.

53. Denies each and every allegation contained in paragraph “53” of the Complaint.

54. Paragraph “54” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “54” of the Complaint.

55. Paragraph “55” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “55” of the Complaint.

56. Paragraph “56” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “56” of the Complaint.

57. Paragraph “57” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “57” of the Complaint.

58. Paragraph “58” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “58” of the Complaint.

59. Paragraph “59” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and

every allegation contained in paragraph “59” of the Complaint.

COUNT TWO

(New York Labor Law: Overtime Pay)

60. Defendants repeat, reiterate and reallege the answers set forth in response to paragraphs “1” through “59” of the Complaint as if fully set forth herein.

61. Paragraph “61” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “61” of the Complaint.

62. Paragraph “62” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “62” of the Complaint.

63. Paragraph “63” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “63” of the Complaint.

64. Paragraph “64” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “64” of the Complaint.

65. Paragraph “65” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “65” of the Complaint.

66. Denies each and every allegation contained in paragraph “66” of the Complaint.

67. Denies each and every allegation contained in paragraph “67” of the Complaint.

68. Denies each and every allegation contained in paragraph “68” of the Complaint.

69. Denies each and every allegation contained in paragraph “69” of the Complaint.

70. Paragraph “70” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “70” of the Complaint.

COUNT THREE

(Unjust Enrichment)

71. Defendants repeat, reiterate and reallege the answers set forth in response to paragraphs “1” through “70” of the Complaint as if fully set forth herein.

72. Denies each and every allegation contained in paragraph “72” of the Complaint.

73. Paragraph “73” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “73” of the Complaint.

74. Paragraph “74” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “74” of the Complaint.

COUNT FOUR

(New York Labor Law: Violation of Wage Theft Prevention Act)

75. Defendants repeat, reiterate and reallege the answers set forth in response to paragraphs “1” through “74” of the Complaint as if fully set forth herein.

76. Paragraph “76” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “76” of the Complaint.

77. Denies each and every allegation contained in paragraph “77” of the Complaint.

78. Denies each and every allegation contained in paragraph “78” of the Complaint.

79. Paragraph “79” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “79” of the Complaint.

80. Paragraph “80” of the Complaint contains legal conclusions to which no responsive pleading is required. However, to the extent a response is required, Defendants deny each and every allegation contained in paragraph “80” of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

81. The Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

82. Plaintiffs’ claims are barred, in whole or in part, by the applicable statutes of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

83. Defendants, at all times, acted in good faith and in conformity with, and reliance upon, all applicable federal and state laws.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

84. Defendants did not intentionally or willfully violate any law.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

85. Defendants are not “joint employers”, nor are the individual defendants “employers” within the meaning of the Fair Labor Standards Act or the New York Labor Law.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

86. Plaintiff Ramon Morales was never an employee of Defendants to be entitled to any

relief. Any and all work, if any, was limited in nature and was done as an independent contractor.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

87. Plaintiff Tony A. Gerges was never an employee of Defendants to be entitled to any relief. Any and all work, if any, was limited in nature, to wit: part time.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

88. Defendant Bagels was never an enterprise engaged in commerce or in the production of goods for commerce, whose annual gross volume of sales made or business done was greater than \$500,000, exclusive of excise taxes at the retail level.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

89. Defendant Natale was never an individual engaged in commerce or in the production of goods for commerce, whose annual gross volume of sales made or business done was greater than \$500,000, exclusive of excise taxes at the retail level.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

90. Defendants were never engaged in interstate commerce. Specifically, Defendants run a bagel shop in Brooklyn at a specific location. There is no movement of persons or things in interstate commerce and there is no use of any instrumentalities of interstate commerce.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

91. Plaintiffs were paid proper wages for any and all hours worked.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

92. Defendants had no knowledge of, nor should they have had knowledge of, any alleged uncompensated work by Plaintiffs as set forth in the Complaint, and Defendants did not authorize, require, request, suffer, or permit such activity by Plaintiffs.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

93. Plaintiffs' claims for penalties, legal fees, expert fees, liquidated damages, enhancement to damages, wage theft and claims for unjust enrichment are barred, in whole or in part, because Defendants at all times acted in good faith to comply with federal and state law, with reasonable grounds to believe they did not violate any federal or state law.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

94. Plaintiffs cannot show that Defendants had actual or constructive knowledge of overtime worked because Plaintiffs did not work overtime.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

95. Plaintiffs' claims are barred, in whole or in part, by the doctrine of *de minimus non curat lex*.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

96. The claims asserted in the Complaint, in whole or in part, are barred by the doctrines of laches, unclean hands, waiver and/or estoppel.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

97. Defendants will rely upon any and all further defenses that become available or appear during discovery or the proceedings in this action, and hereby specifically reserve the right to amend this Answer for the purpose of asserting any additional affirmative defenses as further investigation reveals to be necessary and appropriate.

WHEREFORE, Defendants respectfully request that this Court:

1. Dismiss the Complaint in its entirety, with prejudice;
2. Deny each and every prayer for relief set forth in the Complaint;
3. Award Defendants reasonable attorney's fees, costs and disbursements incurred herein;

and,

4. Grant such other further and different relief as this Court deems just and proper.

Dated. Staten Island, New York
September 29, 2018

Yours, etc.

/s/ Anthony A. Caronna
Anthony A. Caronna, Esq. (AC0990)
Attorney for Defendants
291 Jewett Ave
Staten Island, NY, 10302-2631
(718) 522-5717
acaronna@gmail.com